IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case: 1:21-mj-00128
Assigned to: Judge Zia M. Faruqui
Assign Date: 1/20/2021
Description: COMPLAINT W/ARREST WARRANT

UNITED STATES OF AMERICA	
	18 U.S.C. § 1512(c)(2) **(Obstruction of Congressional Proceeding)**
v.	**18 U.S.C. §2** **(Aiding and Abetting)**
CHRISTOPHER M. KELLY	
	18 U.S.C. §§ 1752(a)(1), 1752(a)(2); 1752(b)
Defendant.	**(Unlawful Entry)**
	40 U.S.C. §§ 5104(e)(2), 5104(e)(2)(D) and (G) **(Violent Entry or Disorderly Conduct)**

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANT

I, Michael J. Andretta being first duly sworn, hereby depose and state as follows:

PURPOSE OF AFFIDAVIT

1. This Affidavit is submitted in support of a Criminal Complaint charging Christopher M. Kelly ("KELLY") with violations of 18 U.S.C. §1512(c)(2) (Obstruction of a Congressional Proceeding); §§ 1752(a)(1), (a)(2) and (b)(1)(A) (Unlawful Entry), 40 U.S.C. § 5104(e)(2)(D) and 5104(e)(2)(G) (Violent Entry or Disorderly Conduct) and 18 U.S.C. § 2(a), as identified below.

2. I respectfully submit that this Affidavit establishes probable cause to believe that KELLY, as a principal and an aider and abettor, violated:

a. 18 U.S.C. §1512(c)(2) by corruptly interfering with, obstructing, and attempting to do the same, of an official proceeding, that is the Joint Session of Congress to count the electors for the Electoral College;

b. 18 U.S.C. § 1752(a)(1) and (2) by (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; For purposes of Section 1752 of Title 18, a "restricted building" includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance; and

c. 40 U.S.C. § 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct at any place in the Capitol Grounds or in any of the Capitol Buildings with the intent to disrupt the orderly conduct of official business, and parade, demonstrate, or picket in any of the Capitol Buildings.

BACKGROUND OF AFFIANT

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"). As such, I am a "federal law enforcement officer" within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request an arrest warrant. I have served as a Special Agent with the FBI since in or about 2009. I am currently assigned to the FBI's Joint Terrorism Task

Force. I have participated in investigations involving domestic terrorism, and the execution of search warrants for electronic accounts, including social media accounts.

2. The facts and information contained in this affidavit are based upon my personal knowledge, information obtained from state and federal law enforcement officers, and information provided by cooperating codefendants. All observations not personally made by me were relayed to me by the individuals who made them or are based on my review of reports, documents, and other physical evidence obtained during the course of this investigation. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter. The dates listed in this Affidavit should be read as "on or about" dates.

STATEMENT OF FACTS SUPPORTING PROBABLE CAUSE

A. Assault on the U.S. Capitol on January 6, 2021

1. The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol.

2. On January 6, 2021, the exterior plaza of the U.S. Capitol was closed to members of the public.

3. On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3,

2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

4. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

5. At approximately 2:00 p.m., certain individuals in the crowd forced their way through, up, and over the barricades, and officers of the U.S. Capitol Police, and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks by U.S. Capitol Police Officers or other authorized security officials.

6. At such time, the certification proceedings still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

7. Shortly thereafter, at approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President

Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 p.m. the same day. In light of the dangerous circumstances caused by the unlawful entry to the U.S. Capitol, including the danger posed by individuals who had entered the U.S. Capitol without any security screening or weapons check, Congressional proceedings could not resume until after every unauthorized occupant had left the U.S. Capitol, and the building had been confirmed secured. The proceedings resumed at approximately 8:00 pm after the building had been secured. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

8. During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

9. Based on my participation in this investigation, including my conversations with a confidential source ("CS-1"),[1] review of records obtained by law enforcement, and conversations with other law enforcement officers about the same, I have learned, in substance and in part, information about KELLY's involvement with the events on January 6, 2021.

B. KELLY's Involvement

10. On or about January 9, 2021, CS-1 identified a Facebook account as being utilized by "Chris Kelly." CS-1 provided to the FBI screenshots containing content posted to and sent and

[1] Since in or about 2019, CS-1 has provided information to FBI in exchange for monetary compensation. CS-1 has no criminal record and the information provided by CS-1 has been proven to be reliable in the past.

received by this account. The materials provided by CS-1 included a screenshot of the account's profile picture. Based on my review of records obtained by law enforcement from the New York Department of Motor Vehicles (the "New York DMV"), as well as my training and experience, the photograph on the account's profile picture appears to be the same individual as in the New York DMV photograph on file for "Christopher M Kelly," who is believed to reside in the vicinity of New City, New York.[2]

11. CS-1 provided law enforcement with a screenshot of a message posted to this Facebook account, dated on or about December 28, 2020, which read, "'When good men do nothing, evil triumphs. Evil, sin and sinful men must be opposed. God commands those who are good, not just to avoid evil but actively oppose it.' Where will you be on 1/6?" Based on my training, experience, and participation in this investigation, including my review of publicly available data, I understand "Where will you be on 1/6?" to be a reference to the joint session of Congress referenced above.

12. CS-1 also provided law enforcement with a screenshot of a Facebook Messenger group chat dated January 6, 2021. In the chat, at or about the time of the breach of the Capitol, "Chris," wrote, "We're in!" A subsequent message, sent by another Facebook user," reads, "@Chris Kelly stay safe [heart emoji]." Directly beneath that message is an image, sent by

[2] On January 10, 2021, based on my review of records obtained by law enforcement from the New York Department of Motor Vehicles (the "New York DMV"), I initially believed that the individual pictured in the Subject Account's profile picture was the same individual as in the New York DMV photograph on file for "Christopher E Kelly," who is believed to reside in the vicinity of Congers, New York. Upon further investigation, and after reviewing the DMV photograph for Christopher M Kelly of New City, NY, I now believe that the individual pictured in the Subject Account's profile picture is more consistent with that of Christopher M Kelly.

"Chris," which, based on my training, experience and participation in this investigation, appears to show an image of rioters inside the Capitol building (Figure One):

Figure One

13. Figure One includes, in the foreground of the image, two men: on the left, one holding what appears to be a "Trump" flag; on the right, a second man wearing what appears to be

a red "Trump" hat, which, based on publicly available information, I believe refers to "Make America Great Again," a slogan used by President Trump's campaign. Taken together, based on my training, experience, and participation in the investigation, along with the information set forth above, I believe the messages and image above reflect that Chris Kelly was using this account to inform associates that he had breached the Capitol building and was inside.

14. Based on the information above, Magistrate Judge Zia F. Faruqui of the United States District Court for the District of Columbia issued a search warrant, case number 21-sc-64, for the account "Chris Kelly" (hereinafter "Kelly Facebook Account"). The Kelly Facebook Account contains information about the user of the account, and indicates the holder as a date of birth of that matches that of KELLY, and a home city of New City, New York, which is also consistent with KELLY. The account also provided KELLY's phone number of ***-***-1057, which Verizon records confirm belongs to KELLY. Facebook also provided a Google email account that is consistent with the known email account belonging to KELLY. Investigation of public records and New York Department of Motor Vehicles databases provide the same telephone number, location and date of birth for Christopher M Kelly of New City, New York. Your affiant therefore believes the Kelly Facebook Account is that belonging to KELLY.

15. A review of IP log history from the Kelly Facebook Account shows IP addresses which document locations consistent with travel from New City, New York to Silver Spring, Maryland on January 6, 2021, and back to the New York area in the days after.

16. According to a review of the direct messages in the Facebook account, a user asked KELLY if he was going to Washington, D.C. on January 2, 2021, and KELLY responded, "Yea 2 nights headed down the 5th staying til the 7th. I know of a few buses leaving from around here for the day." In the same conversation, which continued January 3, 2021 KELLY provided his cell

telephone number, ***-***-1057, and ham radio frequency so the user could contact him in Washington, D.C. Again in the same conversation on January 6, 2021 at 2:22 pm Eastern Standard Time ("EST"), KELLY provided the same photo above in Figure One. The user then responds to KELLY, asking, "Are you inside?!" and," Want me to share? I won't tag you unless you want me to." KELLY responded, "**Sure spread the word, Taking this back by force now, no more bs**" (emphasis added). On the following day KELLY added, "One guy im with got his front teeth knocked out but thats about it."

17. The Kelly Facebook Account also shows that on January 4, 2021 another Facebook user (User 2) asked KELLY, "How are things there?? Gonna be crazy on the 6th eh?" KELLY responded, "Yea Im leaving tomorrow in the afternoon to gey there early." He added, "Yea driving its only 250miles." User 2 stated, "Enjoy the occasion, hope it all goes to plan. Stay safe, Antifa will be out in force." KELLY responded with, "No worries, **I'll be with ex NYPD and some proud boys. This will be the most historic event of my life** (emphasis added)." Your affiant is aware that Proud Boys is a nationalist organization with multiple US chapters and potential activity in other Western countries. The group describes itself as a "pro-Western fraternal organization for men who refuse to apologize for creating the modern world; aka Western Chauvinists." Proud Boys members routinely attend rallies, protests, and other First Amendment-protected events, where they sometimes engage in violence against individuals whom they perceive as threats to their values. The group has an initiation process for new members, who often wear yellow and black polo shirts or other apparel adorned with the Proud Boys logo to events.

18. The Kelly Facebook Account also shows on January 2, 2021 KELLY messaged another user and stated, "Me and [NAME][3] plus a couple of others are headed down the 5th and

[3] A first name is used by KELLY, but redacted by your affiant.

staying 2 nights. Ill be frequency 462.662 on a ham radio if cell service goes down." Public records databases also revealed Christopher M Kelly has a brother ("S1") of New City, New York with the same first name used in the above statement. New York City Police Department records confirm S1 is a retired police officer. Based on this statement, and the statement above about traveling with "ex NYPD and some proud boys" your affiant believes that this comment indicated that KELLY planned to travel to Washington, D.C. with S1.

19. Included in the Kelly Facebook Account were also the Facebook messenger chats provided by the CS-1, which were made and received by the owner of the account during the period of on or around January 6, 2021. The chat referenced above, with the comment, "We're In!" and the subsequent photograph, Figure One, of what appears to be the interior of the U.S. Capitol building, can be found within the search warrant results.

20. The Kelly Facebook Account also shows messenger chats on December 29, 2020, to a group chat with several participants, in which KELLY stated, "Headed to DC the 5th, enough of the keyboard warrior bs. Anyone else going?" Later, on January 6, 2021 at 2:21pm EST Chris Kelly posted to the group, "We're in!" At 2:22 pm EST Chris Kelly posted the photograph in Figure One. A chat participant asked, "You're there, @Chris Kelly? What's really going on?" At 2:25pm EST, KELLY responded, "MAGA is here full on. Capitol building is breached." At 2:30pm EST KELLY added, "Tear gas, police, **stopped the hearing, they are all headed to the basement**," and, "**Fuck these snakes. Out of OUR HOUSE**!" (emphasis added)." Your affiant is aware that on January 6, 2021, at approximately that same time, protesters had gained violent entrance to the U.S. Capitol and the Congressional hearing had been forced into recess.

21. The Kelly Facebook Account shows that KELLY messaged the following photograph (Figure Two) multiple times to multiple recipients on January 6, 2021 and the days following:

Figure Two

Figure Two contains at its center a peson with an American flag that your affiant believes is consistent with the known photograph of KELLY. In one of the chats with another user on on January 9, 2021, KELLY posted the photograph and stated, "That's me," and, "My brother took it."

22. The Kelly Facebook Account records also show that on January 6, 2021 at 2:30 pm EST, KELLY messaged the photograph in Figure One along with the message, "Inside Capitol." On January 6, 2021 at 2:36 pm EST KELLY, in a message thread to another Facebook user ("User 3") states, "We're inside! **Hearing stopped, sending everyone to the basement** (emphasis added)." User 3 responded. "Be careful you don't get arrested for trespassing." KELLY responded

to User 2 with the FIGURE ONE photograph. The Kelly Facebook Account records show that on January 7, 2021, the day after the events at the Capitol building, User 2 asked KELLY, "You ok mate??? Wtf has gone on?" KELLY responded, "Absolutely thanks man," and later that day added, "Antifa Infiltration on the front line."

23. The Kelly Facebook Account also shows that on January 5, 2021 KELLY had a Facebook messenger conversation with another Facebook user (User 4). KELLY messaged, "Headed to DC tomorrow. You going?" User 4 responded, "Unfortunately no. Wife and daughter just arrived after nearly a year from Brazil. Not the first DC experience I want to give them. Stay alert down there, and if someone gets in your face, a knife hand chop to the neck DROPS a motherfucker faster than a punch in the face. Can be the jugular or windpipe. And those douche-bag helmets dont protect the commies' necks." KELLY responded, "Awesome thanks for the advice. Yea my head will be on a swivel for sure." Later, on January 6, 2021 at 12:37pm EST User 4 asked, "What's the buzz on the ground there? This has me worried." KELLY responded at 2:22pm EST, "Capitol Building," and sent the user the Figure One photograph

24. The Kelly Facebook Account also shows that on December 29, 2020, KELLY messaged another friend, "Yea Im fed up of the BS - Im going to DC on the 5th staying two nights. Not worried about Antifa pricks, im going with a couple of old school Patriots." In the same conversation at 4:38pm EST on January 6, 2021 KELLY sent the following photograph (Figure Three):

Figure Three

Figure Three contains at its center a peson with an American flag that your affiant believes is consistent with the known photograph of KELLY. On the following day, January 7, 2021 KELLY added, "My brother was a cop explained it as a robbery. You arrest the criminal after they commit the crime not before." Again your affiant believes Chris Kelly is referencing his brother, S1.

25. Your affiant submits that there is probable cause to believe that KELLY as aware of the planned Joint Session of Congress; that he traveled to Washington, D.C. with the intent to disrupt, prevent and otherwise interfere with that Joint Session of Congress; that he was aware that other persons in his protest were using force and violence to gain entry to the U.S. Capitol against law enforcement personnel; that he entered and remained in and on the U.S. Capitol Grounds and Building with the same intent to obstruct and impede the same Congressional proceeding and law enforcement protecting the U.S. Capitol by force; and that he succeed in interfering with and obstructing that Join Session of Congress. KELLY's intent was evidenced by his pre-protest behavior and his statements while he was unlawfully entering and occupying the U.S. Capitol Building, including:

- "Sure spread the word, Taking this back by force now, no more bs"
- "Tear gas, police, stopped the hearing, they are all headed to the basement," and
- "Fuck these snakes. Out of OUR HOUSE!"

CONCLUSION

26. Based on the foregoing, your affiant believes there is probably cause to believe that on or about January 6, 2021, Christopher Kelly (KELLY), as a principal and an aider and abettor, violated several criminal statutes.

27. First, your affiant submits that there is probable cause to believe violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted

building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions.

28. Second, your affiant submits there is also probable cause to believe that KELLY violated 40 U.S.C. § 5104(e)(2), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

29. Finally, your affiant submits there is probable cause to believe that KELLY violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.

Michael J Andretta
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this _20_ day of January 2021.

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ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE